

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments,)
For FM Broadcast Stations.)
)
(Russellville and Littleville, Alabama))

MB Docket No. **RECEIVED**
RM-10834

MAR 29 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Secretary, to forward to Assistant Chief (Allocations), Audio Division

REPLY COMMENTS

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of WMXV(FM), Channel 278A, Russellville, Alabama (Facility ID No. 14928), by its attorneys, and in response to the Notice of Proposed Rule Making in the above-captioned proceeding, DA 04-72 (released January 20, 2004) (the "Notice"), hereby submits these Reply Comments in the above-captioned proceeding.

Clear Channel filed with the Commission on March 11, 2004, its Comments, whereby Clear Channel affirmed its support for the proposal set forth in the *Notice* and as proposed in Clear Channel's Petition for Rulemaking dated September 24, 2003, as supplemented on September 25, 2003 (collectively, the "Petition"), for the modification of the Commission's Table of Allotments for FM Broadcast Stations (Section 73.202 of the Commission's Rules) to: (a) delete Channel 278A from Russellville, Alabama; (b) add Channel 278A to Littleville,

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Alabama; and (c) modify the license of WMXV(FM) to specify operations on Channel 278A at Littleville, Alabama, in lieu of operation on Channel 278A at Russellville, Alabama (collectively, the "Proposal"). Clear Channel's Comments supported the conclusion in the *Notice* that grant of the Proposal would satisfy the third FM allotment priority by delivering a first local aural transmission service to Littleville, Alabama.

According to the Commission's database, comments were also filed in this proceeding by Mike Self. 1/ In his unverified Comments, Mr. Self states that he is a resident of the service area of WMXV(FM), and asserts that the reallocation of Channel 278A from Russellville to Littleville, Alabama, would be contrary to the public interest. Mr. Self raises three grounds of opposition to the Proposal:

(1) Littleville lacks certain local establishments; (2) Russellville would be left without full-time radio service; and (3) Clear Channel might relocate the WMXV(FM) transmitter site.

As to the lack of certain local establishments, except in one respect, Mr. Self does not dispute the long list of indicia of independent community standing set forth in Clear Channel's Petition and Comments. 2/ Clear Channel never

1/ Mr. Self's Comments are dated March 12, 2004, and were mailed by Mr. Self to Clear Channel on March 12, 2004. The Commission's Electronic Comment Filing System lists Mr. Self's Comments as having been received on March 17, 2004, which is after the March 12, 2004 deadline for Comments set in the *Notice*. Nevertheless, to the extent that Mr. Self's Comments may be considered in this proceeding, they are addressed here.

2/ The one factual quarrel is whether there currently is an operating school in Littleville. Notwithstanding that the "History of Littleville" narrative provided by the Town of Littleville (see Exhibit 2 to Petition) referenced a local school in

asserted that there was a hospital, or fast food chain outlets or a post office located in Littleville – nor are such establishments necessary under Commission precedent. ^{3/} Every community is unique and thus the Commission wisely has not specified a check-list of necessary establishments, but instead reviews the totality of community indicators. As an incorporated community that is listed in the census, Littleville *doubly* presumptively qualifies as a community for allotment purposes. Littleville has many municipal officers – such as its mayor, city clerk and town council – and provides many municipal services, including water, sewer, garbage and police services. Among the operating businesses and local establishments listed by the Town of Littleville are lumber provisioners, storage providers, package stores, a farm center, a music store, a senior citizens center, a general store, a lounge, a bar-b-que establishment, an insurance agency, used car retailers, an

Littleville, the Littleville City Clerk has confirmed that the Littleville school is no longer operating, and that Littleville students instead attend schools operated by Colbert County, in which Littleville is situated.

^{3/} See, e.g. *Freeport and Cedarville, Illinois*, 13 FCC Rcd 18836 (Chief, Allocations Br. 1998) (finding community status when Cedarville, which is listed in the census, has police and fire departments, a city clerk, a mayor and six trustees, two churches, Lions Club, Boy Scouts and American Legion posts, and businesses which include a drug store, lumber outlet, grocery store, local restaurant and bicycle store; *no* listing of a local school, hospital, post office or fast food restaurants); *Mansura, Louisiana*, 12 FCC Rcd 1626 (Chief, Allocations Br. 1997) (finding community status when Mansura, which is listed in the census and is incorporated, has businesses including a theater, drug store, funeral home, dentist and lawyer offices, and a health clinic; *no* listing of a local school, hospital, post office or fast food restaurants); *Asbury, Iowa*, 5 FCC Rcd 5712 (Deputy Chief, Policy and Rules Div. 1990) (finding community status when Asbury, which is incorporated, has a mayor, a city council, a Planning and Zoning Commission, a Parks and Recreation Board, a police force and fire department and provides municipal sewer services; *no* listing of a local school, hospital, post office or fast food restaurants).

upholster, auto repair shops, a video store, a gas station, a country club and a bank. The varied array of social and business organizations located in and serving the residents of Littleville simply provide additional confirmation of Littleville's community standing.

Relating to the remaining local transmission services, the Commission has established that even *one* remaining daytime-only local transmission service suffices. ^{4/} In this instance, Russellville, the current community to which WMXV(FM) is assigned, will continue to be the community of license of *two* such stations – WGOL(AM) and WKAX(AM).


Lastly, as to Mr. Self's concern that WMXV(FM) might relocate from its current licensed site if the reallocation were granted, that concern appears to be solely a private, pecuniary interest of Mr. Self, who happens to be the landlord of WMXV(FM)'s current transmitter site. It is not the Commission's role to preserve the monthly payments of landlords under their lease agreements. In any event, the *Notice* took a relocation contingency into account by providing: "[s]hould an alternate site be selected for the allotment of channel 278A at Littleville, Clear Channel will be required to provide a gain and loss study." See *Notice* at ¶ 4.

^{4/} See, e.g. *Royston and Arcade, Georgia*, 16 FCC Rcd 8906 (Chief, Allocations Br. 2001) (preferential arrangement of allotments by providing a first local aural service to Arcade whereas Royston will continue to be served locally by one daytime-only AM service); *Geneseo, Illinois, and DeWitt, Iowa*, 12 FCC Rcd 19477 (Chief, Allocations Br. 1997) (preferential arrangement of allotments where a first local service occurs at the new community and the old community would continue to be served by one daytime-only AM station.)

In sum, the changes in the Table of Allotments set out in the *Notice* would provide a first local transmission service to a deserving community, Littleville (furthering allotment priority three), while Russellville would lose its only FM service, but would continue to be served by two local transmission services (allotment priority four). Consequently, the Commission promptly should adopt and approve the proposed modification of the FM Table of Allotments and WMXV(FM)'s license pursuant to Section 1.420(i) of the Commission's Rules.

Respectfully submitted,

**CLEAR CHANNEL
BROADCASTING LICENSES, INC.**

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March 29, 2004

DECLARATION

I, Jeff Littlejohn, declare as follows:

1. I am Senior Vice President - Engineering of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of Station WMXV(FM), Russellville, Alabama.

2. I have reviewed the foregoing Reply Comments of Clear Channel in MB Docket 04-12, and do hereby declare under penalty of perjury that the facts and statements contained therein are true and correct to the best of my knowledge, understanding and belief.



Jeff Littlejohn

Executed this 26th day of March, 2004.

Certificate of Service

I, A. Heidi Fogleman, hereby certify that on this 29th day of March, 2004,
a copy of the foregoing **Reply Comments** was sent by first-class mail, postage
prepaid, to:

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